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15 UNITED STATES BANKRUPTCY COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

17 In re: Bankruptcy Case  
18 PG&E CORPORATION No. 19-30088 (DM)  
19 - and - Chapter 11  
20 PACIFIC GAS AND ELECTRIC (Lead Case)  
COMPANY, (Jointly Administered)  
21 Debtors.  
22  Affects PG&E Corporation Date: June 26, 2019  
23  Affects Pacific Gas and Time: 9:30 a.m.  
Electric Company Ctrm: 17  
24  Affects both Debtors Judge: Dennis Montali

25  
26 **OBJECTION OF THE CALIFORNIA STATE AGENCIES TO MOTION OF**  
27 **THE OFFICIAL COMMITTEE OF TORT CLAIMANTS FOR ENTRY OF A**  
**PROTECTIVE ORDER [DOCKET NO. 2419]**

1 The California Department of Toxic Substances Control, California Department of Water  
2 Resources, State Water Resources Control Board, Regional Water Quality Control Boards, State  
3 Energy Resources Conservation and Development Commission, California Department of  
4 Forestry and Fire Protection, California Department of Fish and Wildlife, California Air  
5 Resources Board, California Franchise Tax Board, California Coastal Commission, Department  
6 of Parks and Recreation, San Francisco Bay Conservation and Development Commission,  
7 Department of Housing and Community Development, Central Valley Flood Protection Board,  
8 Department of Conservation including the Division of Oil, Gas, and Geothermal Resources, State  
9 Coastal Conservancy, California High Speed Rail Authority, California Natural Resources  
10 Agency, and California State Lands Commission (collectively, the “California State Agencies”)  
11 hereby file this objection to the motion of the Official Committee of Tort Claimants (“TCC”) for  
12 entry of a protective order in the above-captioned jointly administered Chapter 11 cases (“Chapter  
13 11 Cases”) (the “Motion”) [Docket No. 2419] based on the following:

## INTRODUCTION

15       1. The Debtors<sup>1</sup> and the TCC have filed competing motions for the entry of a  
16 protective order that would apply to any person or entity, which includes governmental units  
17 under Bankruptcy Code section 101(15), for all matters in these Chapter 11 Cases,  
18 notwithstanding the fact that the Proposed Protective Orders were negotiated solely between the  
19 Debtors, the TCC and the UCC. Both motions are set for hearing on June 26. The California  
20 State Agencies have no objection if the Proposed Protective Order applies only to the parties that  
21 negotiated it, namely the Debtors, the TCC and the UCC. However, the California State  
22 Agencies object to having the Proposed Protective Order apply to governmental units, including  
23 but not limited to governmental units of the State of California. The California State Agencies  
24 are informed and believe that other governmental entities have a similar objection, including the  
25 United States Department of Justice which represents federal agencies and the California Public  
26 Utilities Commission.

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<sup>1</sup> Capitalized terms not otherwise defined shall have the same meaning as in the Motion.

## OBJECTION

2       2. Under Ninth Circuit authority, “[i]t is well-established that the fruits of pretrial  
3 discovery are, in the absence of a court order to the contrary, presumptively public.” *San Jose*  
4 *Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999). The party seeking a  
5 protective order “bears the burden of showing specific prejudice or harm will result if no  
6 protective order is granted.” *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002). The  
7 TCC has failed to meet this burden. The Court should order that the Proposed Protective Order  
8 shall not apply to any person or entity that did not participate in its negotiation.

9       3.     The Proposed Protective Order was negotiated solely among the Debtors, the TCC  
10 and the UCC. No other parties to the Debtors' bankruptcy cases were included in the drafting of  
11 the Proposed Protective Order. Motion at 3:7-8. However, the Motion proposes to impose the  
12 requirements of the Proposed Protective Order on any person or entity and for all matters in these  
13 Chapter 11 Cases, regardless of whether such parties even have notice of the Motion, and without  
14 citing any legal authority to authorize such a sweepingly broad order.

15       4. Among other things, the Proposed Protective Order purports to limit the use of any  
16 Discovery Material to the Chapter 11 Cases. None of the example orders attached to the Motion  
17 applies broadly to every “person or entity” in a Chapter 11 case. Rather, each example order  
18 applies only to the parties who negotiated the particular order or to a limited group of parties  
19 involved in a specified, particular matter.

20       5.      The Debtors' utility operations are highly regulated by federal, state and local  
21 governmental entities. There are significant issues with restricting governmental units from using  
22 information received in discovery, including in these Chapter 11 Cases, for law enforcement or  
23 regulatory purposes. Further, the Proposed Protective Order appears to prohibit third parties from  
24 reporting information obtained in the Chapter 11 Cases that should be reported to law  
25 enforcement or regulatory authorities. The overly broad Proposed Protective Order infringes on  
26 the governmental entities' police and regulatory authority in three main ways.

27       6. First, governmental units of the State of California have investigative, enforcement  
28 and regulatory powers that cannot be restricted by the Proposed Protective Order. These

1 governmental units must be able to use information obtained for their own purposes and proceed  
2 with their usual authority without being restricted by the overly broad Proposed Protective Order.  
3 See, e.g., Cal. Gov't Code §11180 (authorizing the head of each department of an agency of the  
4 State of California to investigate and prosecute actions concerning all matters relating to the  
5 business activities and subjects under the jurisdiction of the department including violations of  
6 any law, rule or order of the department). A court may not enjoin an official from carrying out  
7 his duties under the law. See Cal. Code Civ. Proc., § 526, subd. (b)(4), (6); Cal. Civ. Code §  
8 3423(d), (f); *People v. Superior Court (Witzerman)* (1967) 248 Cal.App.2d 276, 282-84  
9 (protective order that tied hands of the Attorney General was an abuse of discretion).<sup>2</sup>

10       7. Second, under California law, governmental units of the State of California must  
11 be able to share information with law enforcement and to communicate among themselves for  
12 regulatory and law enforcement purposes without any curtailment. For example, any  
13 governmental unit of the State of California, including the California State Agencies, has the  
14 authority to disclose information obtained through its investigations to law enforcement personnel  
15 and agencies, and to personnel of other government agencies for law enforcement or regulatory  
16 purposes. See, e.g., Cal. Gov't. Code § 11181(g). Government Code section 11181(g) permits a  
17 department head to divulge information related to unlawful activity that is discovered from  
18 "interrogatory answers, papers, books, accounts, documents, and [other discoverable items] or  
19 testimony" to the Attorney General or any prosecuting attorney in the State of California, other  
20 state or the United States with responsibility for investigating the unlawful activity under certain  
21 conditions. See also, Cal. Gov't. Code § 11180.5 (state agency may assist Attorney General in

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23       <sup>2</sup> For example, the California Franchise Tax Board ("FTB") has statutory authority to conduct  
24 investigations using demands for information and administrative subpoenas under California  
25 Revenue and Taxation Code section 19504. To the extent that the Proposed Protective Order  
26 seeks to limit the FTB's ability to utilize an administrative subpoena, such order would violate  
27 Article XIII, Section 32, of the California Constitution which provides: "No legal or equitable  
28 process shall issue in any court against this State or any officer thereof to prevent or enjoin the  
collection of any tax. After payment of tax claimed to be illegal, an action may be maintained to  
recover the tax paid, with interest, in such manner as may be provided by the Legislature." A  
subpoena issued by FTB "is the first step in the collection of tax and an integral part of the tax  
collection process, and section 32 mandates that it shall not be prevented or enjoined by the legal  
or equitable process of any court." *People ex rel. Franchise Tax Board v. The Superior Court*,  
164 Cal.App.3d 526, 545 (1985).

1 conducting investigations). California Government Code section 11181 sets forth the wide  
2 variety of methods by which the Attorney General may carry out his authority to conduct an  
3 investigation to ascertain whether any laws are being violated. Such activities cannot be  
4 enjoined. See Cal. Code Civ. Proc., § 526, subd. (b)(4), (6); Cal. Civ. Code § 3423(d), (f); *People*  
5 *v. Superior Court (Witzerman)* (1967) 248 Cal.App.2d 276, 282-84 (protective order that tied  
6 hands of the Attorney General was an abuse of discretion).

7       8.     Third, the California State Agencies are concerned that the Proposed Protective  
8 Order appears to prohibit third parties from providing information to law enforcement or  
9 regulatory authorities regarding potential violations of the law.

10        9.      Rather than having governmental units swept up in the overly broad Proposed  
11 Protective Order being requested by the Debtors and the TCC, and negotiated solely by the  
12 Debtor, the UCC and the TCC apparently without any consideration of law enforcement and  
13 regulatory exceptions, governmental units should be carved out from the Proposed Protective  
14 Order. These issues can and should be dealt with on a case-by-case basis with governmental units  
15 as they arise in the Chapter 11 Cases.

16        10. The California State Agencies are informed and believe that other governmental  
17 authorities involved in the Chapter 11 Cases, including the United States Department of Justice,  
18 which represents federal agencies in the Chapter 11 Cases, concur with the position of the  
19 California State Agencies that the Proposed Protective Order should apply solely to the parties  
20 who negotiated it.

21       11. The California State Agencies reserve the right to present other objections to the  
22 form of protective order in the event the Court denies their request to be excluded therefrom. As  
23 admitted by the Debtors and the TCC, no one other than the Debtors, the TCC and the UCC have  
24 been privy to the negotiations.

25        12. The California State Agencies have presented these issues to counsel for the TCC  
26 and will continue to attempt to resolve them prior to the hearing on the Motion.

## **RESERVATION OF RIGHTS**

28 13. Neither this objection nor any subsequent appearance, pleading, proof of claim,

1 claim or suit is intended or shall be deemed or construed as:

2 a. a consent by the California State Agencies to the jurisdiction of this Court  
3 or any other court with respect to proceedings, if any, commenced in any case against or  
4 otherwise involving the California State Agencies;

5 b. a waiver of any right of the California State Agencies to (i) have an  
6 Article III judge adjudicate in the first instance any case, proceeding, matter or controversy as to  
7 which a Bankruptcy Judge may not enter a final order or judgment consistent with Article III of  
8 the United States Constitution, (ii) have final orders in non-core matters entered only after de  
9 novo review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the  
10 Chapter 11 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases,  
11 (iv) have the United States District Court withdraw the reference in any matter subject to  
12 mandatory or discretionary withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs,  
13 recoupments or remedies to which the California State Agencies are or may be entitled under  
14 agreements, in law or in equity, all of which rights, claims, actions, defenses, setoffs and  
15 recoupments are expressly reserved hereby; or

16 c. a waiver of any objections or defenses that the State of California, the  
17 California State Agencies or any other agency, unit or entity of the State of California may have  
18 to this Court's jurisdiction over the State of California, the California State Agencies or such  
19 other agency, unit or entity based upon the Eleventh Amendment to the United States  
20 Constitution or related principles of sovereign immunity or otherwise, all of which objections and  
21 defenses are hereby reserved.

22 **CONCLUSION**

23 The California State Agencies request that Court order that the Proposed Protective Order  
24 apply only to the Debtors, the TCC and the UCC. Alternatively, at a minimum, the California  
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1 State Agencies request that the Court include in any Proposed Protective Order an express  
2 exception that such order does not apply to governmental units.

3 Dated: June 19, 2019

Respectfully submitted,

4 XAVIER BECERRA  
5 Attorney General of California  
6 MARGARITA PADILLA  
7 Supervising Deputy Attorney General

8 By:/s/ Paul J. Pascuzzi

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13 Attorneys for California Department of Toxic  
14 Substances Control, California Department of Water  
15 Resources, State Water Resources Control Board,  
16 Regional Water Quality Control Boards, State Energy  
17 Resources Conservation and Development Commission,  
18 California Department of Forestry and Fire Protection,  
19 California Department of Fish and Wildlife, California  
20 Air Resources Board, California Franchise Tax Board,  
21 California Coastal Commission, Department of Parks  
22 and Recreation, San Francisco Bay Conservation and  
23 Development Commission, Department of Housing and  
24 Community Development, Central Valley Flood  
25 Protection Board, Department of Conservation including  
26 the Division of Oil, Gas, and Geothermal Resources,  
27 State Coastal Conservancy, California High Speed Rail  
28 Authority, California Natural Resources Agency, and  
California State Lands Commission

**PROOF OF SERVICE**

I, Lori N. Lasley, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, Suite 1750, Sacramento, CA 95814. On June 19, 2019, I served the within documents:

**OBJECTION OF THE CALIFORNIA STATE AGENCIES TO MOTION OF  
THE OFFICIAL COMMITTEE OF TORT CLAIMANTS FOR ENTRY OF A  
PROTECTIVE ORDER [DOCKET NO. 2419]**

By Electronic Service only via CM/ECF.

/s/ Lori N. Lasley  
Lori N. Lasley